

AGENDA FOR THE BOARD OF ADJUSTMENT MEETING

May 30, 2014

- I. **ATTENDANCE** - The Chair will call the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, May 30, 2014.
- II. **APPROVAL OF MINUTES** - The Chair will announce that the minutes of the January 31, 2014 and March 28, 2014 meetings will be considered at this time.
- III. **PUBLIC HEARING ON ZONING APPEALS**

- A. **Sounding the Agenda** - In order to expedite completion of agenda items, the Chair will sound the agenda in regard to any postponements, withdrawals, and items requiring no discussion.
 1. **Postponement or Withdrawal of any Scheduled Business Item** - The Chair will announce that any person having an appeal or other business before the Board may request postponement or withdrawal of such at this time.
 2. **No Discussion Items** - The Chair will ask if there are any other agenda items where no discussion is needed...that is, (a) The staff has recommended approval of the appeal and related plan(s), (b) The appellant concurs with the staff's recommendations. Appellant waives oral presentation, but may submit written evidence for the record, (c) No one present objects to the Board acting on the matter at this time without further discussion. For any such item, the Board will proceed to take action.
- B. **Transcript or Witnesses** - The Chair will announce that any applicant or objector to any appeal before the Board is entitled to have a transcript of the meeting prepared at his expense and to have witnesses sworn.
- C. **Variance Appeals** - As required by KRS 100.243, in the consideration of variance appeals before the granting or denying of any variance the Board must find:

That the granting of the variance will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or a nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the zoning regulations. In making these findings, the Board shall consider whether:

- (a) The requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone;
- (b) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant; and
- (c) The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

The Board shall deny any request for a variance arising from circumstances that are the result of willful violations of the zoning regulation by the applicant subsequent to the adoption of the zoning regulations from which relief is sought.

1. **V-2014-23: SOLOMON VAN METER** - appeals for variances to: 1) reduce the front yard from 8 feet to 0 feet; 2) reduce the rear yard from 6.05 feet to 3 feet; 3) reduce each side yard from 8 feet to 6 feet; and 4) increase the maximum allowable driveway width from 10 feet to 24 feet in order to replace an existing duplex with a single-family residence in a High Density Apartment (R-4) zone, within the defined Infill and Redevelopment Area, at 139 Bruce Street (Council District 2).

The Staff Recommends: Approval of the setback variances, for the following reasons:

- a. Granting the requested variances should not adversely affect the subject or surrounding properties and will not cause a health, safety or welfare problem as long as the proposed parking area is removed from the property. It will allow a new (larger) single family residence on a property that currently has a non-conforming duplex structure on it.
- b. Granting the requested setback variances will not be an unreasonable circumvention of the Zoning Ordinance, because the setback requirements were written with a more typical and much larger lot in mind.
- c. The extremely small size and unusual shape of the lot (being only 30' deep but 60' wide) with an existing non-conforming structure that covers more than 80% of the lot are unique circumstances that justify the requested variances.
- d. Strict application of the Zoning Ordinance would require that the non-conforming structure remain as it

has been historically, or that any new structure be within the current limitations (including volumetric measurements) of the existing duplex.

- e. The requested variance is not a willful violation of the Zoning Ordinance rather, it is a design response to the unique circumstances of this property that were determined during the design phase of the proposed single family residence.

This recommendation of approval is made subject to the following conditions:

1. The property shall be developed in accordance with the submitted application and a modified site plan that removes the proposed garage.
2. All necessary permits shall be obtained by the applicant, including but not limited to, a building permit for the residence prior to construction.
3. There shall be no driveway, garage, or other off-street parking space proposed on the subject property.

The Staff Recommends: **Disapproval of the driveway width variance**, for the following reason:

- a. Approval of the requested front yard setback to 0 feet renders this variance not applicable because a driveway, as defined by the Zoning Ordinance, would not exist on the subject property.
- b. Furthermore, it is recommended that this property not be allowed to have a parking space, in conjunction with the requested setback variances, because of concerns about safety of pedestrians on the sidewalk.

2. **V-2014-30: DIANNE WILSON** - appeals for a variance to increase the maximum allowable height of a front yard privacy fence from 4 feet to 8 feet in a Single Family Residential (R-1C) zone, at 669 Mt. Vernon Drive (Council District 3).

The Staff Recommends: **Disapproval**, for the following reasons:

- a. The requested variance does not arise from a special circumstance that does not generally apply to land in this same zone. There are no unique physical characteristics, such as topography or neighborhood character, that would serve as a justification to approve the requested front yard fence height variance.
- b. Granting the requested variance will cause this property to be out of character with other in the neighborhood, as very few properties have any front yard fences, much less at the height(s) requested by the applicant.
- c. Strict application of the Zoning Ordinance will not deprive the applicant of a reasonable use of her property, as a 4' tall fence in the front yard is allowed by right in this zone, with the issuance of a Fence permit.

3. **V-2014-32: PAUL SCHWARTZ** - appeals for a variance to reduce the required front yard from 30 feet to 0 feet in order to provide an off-street parking space in a Single Family Residential (R-1D) zone, at 6497 Athens-Boonesboro Road (Council District 12).

The Staff Recommends: **Approval**, for the following reasons:

- a. Granting the requested variance should not adversely affect the subject or surrounding properties and will not cause a health, safety or welfare problem. A modified version of the proposed driveway will actually provide safer ingress & egress from the property.
- b. Granting the requested variance will not be an unreasonable circumvention of the Zoning Ordinance. By allowing parking in front of the residence; a safer environment for the occupants will be created.
- c. The small size of the lot and the necessity of using the rear yard for a septic field are the special circumstances that are applicable in this case.
- d. Strict application of the Zoning Ordinance would result in on-street parking as the only allowable parking for the subject property.
- e. This request is not a willful violation of the Zoning Ordinance. The conditions of the site were created before the current owner's involvement, and the addition of the septic system further restricts the owner's use of the property.

This recommendation of approval is made subject to the following conditions:

1. The property shall be developed in accordance with the submitted site plan and application, allowing minor modifications, if required, by the Divisions of Engineering; Traffic Engineering; or Building Inspection as a part of the normal permitting procedures.
2. Paving permit shall be obtained by the applicant.

4. **V-2014-37: SCW NEWTOWN, LLC** – appeals for a variance to increase the maximum allowable height of a

front yard fence from 4 feet to 6 feet in a Highway Service Business (B-3) zone, at 763 Newtown Pike (Council District 1).

The Staff Recommends: **Approval**, for the following reasons:

- a. Increasing the allowable fence height from 4' to 6', for the purpose of securing scaffolding and other contractor equipment, should not adversely affect the public health, safety, or welfare, nor alter the character of the area, provided that required tree plantings along the entrance drive are completed.
- b. Similar fences and some solid walls are common in the general vicinity, on properties located immediately south of the subject lot. This is fairly uncommon along a major arterial roadway locally, and a special circumstance that contributes to justifying the requested variance.
- c. The existing zoning is mostly B-4 and I-1 in this area, which permits the type of security fencing the appellant proposes. Thus, approval of this variance in a B-3 zone will not result in an unreasonable circumvention of the Zoning Ordinance.
- d. Strict application of the Zoning Ordinance would result in a hardship to the appellant, and could pose difficulty to them in providing a secure site for the materials and the public.
- e. A fence permit has not yet been obtained by the appellant, or by Safway LLC. Thus, there has not been a willful violation or any other attempt to circumvent the requirements of the Zoning Ordinance.

This recommendation of approval is made subject to the following conditions:

1. The fence shall be erected as located and depicted in the submitted application and site plan.
2. The fence on the subject property shall be consistent with the approved Zoning Compliance Permit that has been issued for this site.
3. The fence installation shall not occur until a Fence Permit is issued by the Division of Building Inspection.
4. The planting of the remaining seven trees along the entrance drive parallel to the property line adjacent to the mobile home park, shall be completed as required by the conditional zoning restrictions in place for the subject site.
5. The landscape buffer along the frontage of Newtown Pike, shown on the submitted site plan, shall be planted as depicted, and maintained.
6. The 24' gate proposed along the Newtown Pike frontage is subject to review and approval by both the Divisions of Traffic Engineering and Fire and Emergency Services, prior to issuance of a Fence Permit.

5. **V-2014-39: JIMMY BRASHEAR & GAY KANAI** – appeal for variances to: 1) reduce the required front yard from 20 feet to 4 feet; 2) reduce the side street yard from 20 feet to 6 feet; and 3) reduce parking by 50% from (6 spaces to 3 spaces) in a Light Industrial (I-1) zone, at 559 East Third Street (Council District 1)

The Staff Recommends: **Approval**, for the following reasons:

- a. Granting the requested variances should not adversely affect the subject or surrounding properties and will not cause a health, safety or welfare problem. In particular, the proposed building will not create a sight distance hazard, as it will be located outside of the sight triangle of the intersection of East Third Street and Withrow Way. Furthermore, it will not be out of character with properties in the general vicinity, as some of the surrounding properties in this urban neighborhood have existing setbacks that are similar to those proposed.
- b. Granting the requested variance will not be an unreasonable circumvention of the Zoning Ordinance, as the Ordinance promotes the consideration of variances for infill & redevelopment projects that will enhance the character of an area. This land use will do so.
- c. The small size and odd shape of the lot, in conjunction with the unique nature of the proposed niche business, are unique circumstances that justify the requested variances for this live/work mixed-use proposal.
- d. Strict application of the Zoning Ordinance would make the development of this small lot very difficult, and would likely result in a less desirable light industrial use for this area.
- e. The requested variance is not a willful violation of the Zoning Ordinance, but rather stems from a design response to the unique circumstances of this property that were determined during the normal building permit review process.

This recommendation of approval is made subject to the following conditions:

1. The property shall be developed in accordance with the submitted site plan and application, allowing minor modifications, if required, by the Divisions of Traffic Engineering or Building Inspection as a part of the normal permitting procedures.
2. All necessary permits shall be obtained by the applicant, including but not limited to, a building permit prior to construction, and a Zoning Compliance Permit from the Division of Planning and a Certificate of Occupancy from the Division of Building Inspection.

D. **Conditional Use Appeals**

1. **C-2014-10: LEXINGTON FRIENDS MEETING** – a request to amend an existing conditional use permit to allow childcare for 80 or fewer children and to add a play area and a handicap accessible entry in a Two Family Residential (R-2) and a Planned Neighborhood Residential (R-3) zone, at 649 – 659 Price Ave. (Council District 1).

The Staff Recommends: **Approval**, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties, as an institutional/church use has occupied this property for approximately 60 years, and the Lexington Friends Meeting has successfully operated at this location since 200. The expansion of the use to allow a day care center during the week is a logical and efficient use of the established facilities, and is common at many churches throughout this community. Furthermore, adequate parking will be available on site, and the church intends to significantly increase the amount of green space behind the church.
- b. All necessary public facilities and services are available and adequate for the proposed expansion.

This recommendation of approval is made subject to the following conditions:

1. The property shall be developed in accordance with the approved site plan and application, allowing for slight modifications to the drop-off area and parking lot design during the normal permitting process, subject to the review and approval of the Divisions of Planning, Building Inspection, Traffic Engineering, and Engineering.
 2. All applicable permits, including a Building Permit, Zoning Compliance Permit, and Certificate of Occupancy, shall be obtained by the applicant from the Divisions of Building Inspection and Planning.
 3. The facility shall at all times operate in compliance with the regulations of the Kentucky Cabinet for Health and Family Services.
 4. The applicant shall maintain and/or replace the parking lot perimeter landscaping and buffering, including but not limited to; the vegetative buffers along the street frontages and the fencing where adjoining the neighboring residential properties. Landscaping and buffering shall meet the requirements of Article 18, except where specifically varied by the Board of Adjustment in cases CV-90-129 & CV-94-51.
2. **C-2014-31: IAMAW, DISTRICT 27** - appeals for a conditional use permit for a temporary structure for up to 180 days in a Neighborhood Business (B-1) zone, at 5693 Briar Hill Road (Council District 12).

The Staff Recommends: **Approval**, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject lot or surrounding properties. An approved temporary structure of this type in the B-1 (Neighborhood Business) zone would not be an unusual or inappropriate situation. Furthermore, the location of this office trailer will comply with all required setbacks of the B-1 zone.
- b. All necessary public facilities are available and adequate for this use, including police and fire protection.

This recommendation of approval is made subject to the following conditions:

1. That the temporary structure (office trailer) be set up and installed according to the submitted site plan and application.
 2. That a Zoning Compliance Permit and any applicable permit from Building Inspection be obtained by the applicant within 30 days of Board action.
 3. That the permits issued for this office trailer remain valid for a period not to exceed at total 180 days from date of placement (from March 17, 2014-October 12, 2014).
3. **C-2014-33: COMMONWEALTH BAPTIST COLLEGE** - appeals for a conditional use permit to revise a previously approved site plan, to include parking a basketball “courts” in the Agricultural Rural (A-R) zone, at 3436-3440 Versailles Road (Council District 12).

The Staff Recommends: **Approval** of the amendment to the conditional use for parking and a small recreational area, for the following reasons:

- a. Granting the requested amendment to the conditional use should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity, since the proposed parking and

basketball courts will be located to the rear of the building, will not be lighted, and will be screened from adjoining residential properties.

- b. All necessary public facilities and services, including police and fire protection, are available and adequate for the proposed use, as this use does not require sanitary sewer service.

This recommendation of approval is made subject to the following conditions:

1. The additional parking and basketball courts shall be constructed in accordance with the submitted application and revised site plan, which indicates a total of 100 off-street spaces to be provided.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
3. The design of the new / reconfigured parking area shall be subject to review and approval by the Division of Traffic Engineering.
4. The parking areas shall be paved, with spaces delineated, and landscaped / screened in accordance with the requirements of Articles 16 and 18 of the Zoning Ordinance.
5. Any outdoor pole lighting for the parking area shall be of a shoebox (or similar) design, with light shielded and directed downward to avoid disturbing adjoining properties.
6. A storm water management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.
7. The basketball and tennis courts shall not have separate lighting installed.

4. **C-2014-34: COHEN REALTY INVESTMENTS (DBA CVH LEXINGTON, LLC)** - appeals for a conditional use permit to amend the existing site plan, as well as applicable conditions in a Professional Office (P-1)/High Density Apartment (R-4) zone, at 2368 Professional Heights Drive, 120-126 & 128-134 E. Lowry Lane (Council District 4).

The Staff Recommends: **Approval**, for the following reasons:

- a. Granting the requested change in the site plan for the approved conditional use permit should not adversely affect the subject or surrounding properties. The drainage from this site had been extensively studied, and the previously approved open spaces will remain intact. Fencing will ensure proper buffering of this use from the surrounding residences.
- b. All necessary public facilities, including any modifications to the stormwater system as deemed necessary by the Divisions of Engineering and Water Quality, will be available and adequate for this use.

This recommendation of approval is to remain subject to the following conditions:

1. Construction of the extended-stay hotel shall be done in accordance with the submitted application and site plan, or as amended by the Planning Commission, except as noted below.
2. All necessary permits shall be obtained from the Divisions of Planning and Building Inspection prior to construction and occupancy.
3. The parking lot shall be paved, with spaces delineated, and landscaped/screened according to the provisions of Articles 16 and 18 of the Zoning Ordinance. In addition, zone-to-zone screening shall be provided as required and approved by the Landscape Examiner prior to the issuance of any building permits for construction.
4. The parking lots in the R-4 zone shall continue at all times to comply with the provisions of Article 16-3 of the Zoning Ordinance, which describes conditions under which a parking lot may be established and operated in an R-4 zone.
5. A storm water management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals, subject to acceptance by the Division of Engineering and the Division of Water Quality. This plan shall take into account any existing downstream drainage problems.
6. The open space and tree preservation areas will not be substantially altered by an amended final development plan without prior approval of the Board of Adjustment.
7. Action of the Board shall be reflected on the Final Development Plan for the property.
8. All lighting shall be directed away from residential uses and be of a shoebox design. Any low level lighting of the walking path shall be of a bollard style, and directed away from residential uses.
9. If the Division of Traffic Engineering determines that a traffic study is warranted, then the applicant agrees to provide such a study.
10. The applicant will record a deed restricting the Heather Way lot to uses permitted in the current R-1C zone and prohibiting access to the extended-stay lot from Heather Way.
11. There will be an 8-foot solid wood fence around the property where it abuts the R-1C lots, except that the fence shall not be placed in the drainage basin in the corner.
12. There shall be planted a solid row of arborvitae or similar fast growing evergreen trees along the fence at the rear of the Heather Way lots, and the trees shall be placed along the fence adjoining the Lowry lots as necessary to supplement existing screening. Regardless, no additional trees shall be planted

where the Bur Oaks would block sunlight or otherwise prevent new trees from thriving. A grove of 6-8 Bald Cypress trees shall be planted in the corner near the storm water basin. The final landscape and tree planting plan shall be approved by the Urban Forester.

5. **C-2014-35: KEENELAND ASSOCIATION** - appeals for a conditional use permit to expand operations, including the building of a new structure and accessory parking, in the Agricultural Rural (A-R) zone, at 3801-4081 Versailles Road (Council District 12).

The Staff Recommends: **Approval**, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties, as Keeneland has successfully operated at this location for nearly 80 years. Furthermore, adequate and efficiently designed parking will be available on site. The proposed event center will be approximately ¼ mile from the nearest property owner, and Keeneland's 440+ acres can easily accommodate the proposed addition to their facility without disturbing any surrounding property owner.
- b. All public facilities, including sanitary sewers and roadways, are adequate and available to serve the proposed racetrack and this addition of the "Events Center".

This recommendation of approval is made subject to the following conditions:

1. The property shall be developed in accordance with the approved site plan and application, allowing for slight modifications, if necessary, during the normal permitting process, subject to the review and approval of the Divisions of Building Inspection, Traffic Engineering, and Engineering.
2. All applicable permits, including a Building Permit, Zoning Compliance Permit, and Certificate of Occupancy, shall be obtained by the applicant from the Divisions of Building Inspection and Planning.

E. **Administrative Reviews** - None

- IV. **BOARD ITEMS** - The Chair will announce that any items a Board member wishes to present will be heard at this time.
- V. **STAFF ITEMS** - The Chair will announce that any items a Staff member wishes to present will be heard at this time.
- VI. **NEXT MEETING DATE** - The Chair will announce that the next meeting date will be June 27, 2014.
- VII. **ADJOURNMENT** - If there is no further business, the Chair will declare the meeting adjourned.